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APR 26 2004

In the United States Patent and Trademark Office

Serial No.: 09/526,783

§ Filing Date: 03/16/2000

Title: INVALIDATING DEVICE FOR
PERFORATING PLANE

§ Examiner: DEXTER, CLARK F

Applicant: SAUER et al.

§ GA No.: 3724

Atty docket no: 1.G164.186

§
6 pages

CERTIFICATE OF TRANSMISSION UNDER 37 CFR §1.8. I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office

On February 3, 2004Typed or printed name of person signing this certificate: C. DELLEYSignature of person signing this certificate: C. Delley

**SECOND REQUEST FOR REFUND FOR ERRONEOUS PETITION FOR
REQUEST TO WITHDRAW HOLDING OF ABANDONMENT**

To fax : 001 703 872 9303

Attn. Mr. Clark F. Dexter

United States Patent and Trademark Office
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, Virginia 22313-1450

RECEIVED**APR 27 2004****OFFICE OF PETITIONS**

Dear Sir:

On June 30, 2003 we received a Notice of Abandonment dated June 18, 2003 for failure to timely respond to the Office Action mailed on September 24, 2002. A copy of this Notice is herewith enclosed. In response, Applicant submitted this Request for Withdrawal of the Holding of Abandonment which was denied, a copy of the decision being attached.

Applicant noticed that due to error without deceptive intent, namely, failing to link the abandoned case to the continuation case (Ser. No. 10/350,507, filed on 01/24/2003) filed in its stead, that this petition to revive was filed. In fact, it was indeed the intention of the

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REMINDER
April 26, 2004

#20

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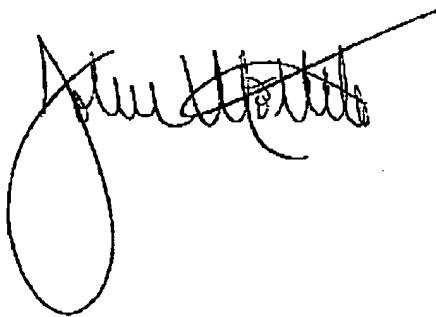
Applicant to abandon this application, in favor of the aforementioned continuation application.

Applicant therefore requests that the Petition for an Unintentionally Abandoned Application be considered null and void at its inception and so be withdrawn. It is believed that a refund of the petition fee of \$1300 for an unintentionally abandoned application is in order, although it is understood that the Commissioner may be justified in deducting from the amount to be refunded a petition fee of \$130 and whatever actual costs that the Commissioner may have incurred in responding to the erroneous petition.

The Undersigned authorizes the Commissioner to debit the account of BUGNION SA, no 50 0800 for any fees that may be due under this Petition.

If the Commissioner has further questions, he is invited to contact the undersigned at phone 011-4122-747-78-49 or fax at 011-4122-346-89-60 or e-mail at patents@bugnion.ch.

Respectfully submitted,



John MOETTELI
U.S. Reg. No. 35,289

Date : February 2, 2004

Enclosures : Copy of Decision on Petition to withdraw Abandonment
Copy of Notice of Abandonment
Copy of Decision on First Refund Request (letter of Dec 15, 2003)



UNITED STATES PATENT AND TRADEMARK OFFICE

Sept. 23, 2003

JUL 23 2003

COMMISSIONER FOR PATENTS
 P.O. BOX 1450
 ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No. 17

In re Application of

Karl Hartmut Sauer et al

Application No. 09/526,783

Filed: March 16, 2000

Attorney Docket No. 1.G164.186

DECISION ON PETITION

This is a decision on the petition filed by facsimile transmission on July 8, 2003 by which petitioners request withdrawal of the holding that this application stands abandoned for failure to timely file a proper reply to the Office letter mailed on September 24, 2002. The petition is considered under 37 CFR 1.181 and no fee is required.

The petition is denied.

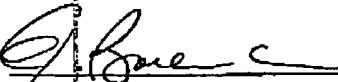
Petitioners allege that a timely reply to the Office letter in question was in fact filed. Petitioners support this allegation by including a copy of the reply. The reply has 37 CFR 1.8(a) certificate of mailing affixed thereto that is dated December 18, 2002.

However, the record shows that the Office letter in question was a final rejection. The record further shows that on December 30, 2002, an advisory action was mailed to petitioners. The advisory action states that the amendment in question would not be entered, and gives reasons for the refusal to enter the amendment.

It therefore appears that this application became abandoned for failure to file a proper reply to the final rejection. It does not appear from the record that the abandonment was the fault of the Office; rather, it appears that petitioners did not take steps to insure that a proper reply to the final rejection, within the meaning of 37 CFR 1.113 and 37 CFR 1.116 was filed. In general, see MPEP §§ 714.12 and 714.13. See also MPEP 711.03(c) which states that "[E]vidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment." It appears, therefore, that petitioners' proper course of action is to proceed pursuant to 37 CFR 1.137.

Petitioners may file a request for reconsideration of this decision, provided that such request is filed within two months of the date of this decision. The application is being returned to storage as an abandoned file.

PETITION DENIED.


 E. Collins-Cross, Director, Patent
 Examining Groups 3710 and 3720

John Moettelli
 Bugnion S.A.
 Case 375
 Geneva, CH-1211 GENEVA 12
 SWITZERLAND

VIA AIR MAIL

26/04 '04 15:39 FAX + 41 22 346 89 60

BUGNION SA GENEVA
BUGNION SA

004

7.7.03



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Received by attorney
received with thanks

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
02/526.783	03/16/2000	Karl Hartmut Sauer	1.G164.186	1623
7590	06/18/2003			

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Case 375
Geneva, CH-1211 GENEVA 12
SWITZERLAND

EXAMINER

DEXTER, CLARK F

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 06/18/2003

July 18, 2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment	Application No. 09/526,783	Applicant(s) Sauer et al.
	Examiner Clark F. Dexter	Art Unit 3724

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -

This application is abandoned in view of:

1. Applicant's failure to timely file a proper reply to the Office letter mailed on Sep 24, 2002.

(a) A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.

(b) A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113(a) to the final rejection.

(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).

(c) A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).

(d) No reply has been received.

2. Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).

(a) The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).

(b) The submitted issue fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d) is \$_____.

(c) The issue fee and publication fee, if applicable, has not been received.

3. Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).

(a) Proposed new formal drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.

(b) No corrected drawings have been received.

4. The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

5. The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

6. The decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

7. The reason(s) below:



CLARK F. DEXTER
PRIMARY EXAMINER
ART UNIT 3724

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

1.G164.186



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BUGNION SA

09.01.2004 08:45

December 15, 2003

Bien reçu merci
received with thanks

JOHN MOETTELLI
BUGNION S A
CASE 375
GENEVA, ZZ CH-1211 GENEVA 12
CH

Dear Sir/Madam,

This is to Deny your refund request in the amount of \$1,300.00, for patent/serial number 09626783.

Application or petition fee not refundable. Money paid by actual mistake or in excess, such as payment not required by law, will be refunded; but a mere change of purpose after payment of money, as when a party desires to withdraw an application, an appeal or a request for oral hearing does not entitle the party to a refund (37 CFR 1.26). If any application is filed without the specification or drawing and the omission is corrected within the period set, the application will be returned or otherwise disposed of. The fee, if submitted should include the \$130.00 handling fee (37 CFR 1.53).

Sincerely,

Karen Creasy
KAREN CREASY
Office of Petition
Refund Section, Office of Finance